IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IRON WORKERS LOCAL UNION NO. 17 INSURANCE FUND, et. al.,

Plaintiffs,

vs.

PHILIP MORRIS, INC. et. al.,

Defendants.

No. 1:97CV1422

CERTIFIED COPY

DEPOSITION OF JAY C. RIPPS

San Francisco, California

Wednesday, December 9, 1998

Volume 1

Reported by:
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Deposition of JAY C. RIPPS, Volume 1, taken on behalf of Plaintiff Iron Workers Local Union No. 17 Insurance Fund, at One Market Street, Spear Street Tower, #3600, San Francisco,, beginning at 9:15 a.m. and ending at 3:53 p.m., on Wednesday, December 9, 1998 before ELAINE A. DELLINGES, Certified Shorthand Reporter No. 5049.

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San Francisco, California, Wednesday, December 9, 1998

9:15 a.m. - 3:53 p.m.

JAY C. RIPPS,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PICCIONI:

Q Would you please state your name for the record.

A My name is Jay Ripps.

Q And your work address?

A It's One Market Plaza, Spear Street Tower, San Francisco, California.

Q Mr. Ripps, have you ever had your deposition taken before?

A Yes, I have.

Q So you are probably familiar with the procedures, but just for a reminder would you agree that if there is any question that I ask that's unclear that you won't answer it without asking for clarification?

A Yes.

Q Mr. Ripps, when were you first contacted

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about working on the Iron Workers case?

A I believe I was first contacted about four months ago.

Q And who was that who spoke to you?

A That was Ms. Marchant.

Q So at that point had you already prepared previous reports in trust fund, any trust fund cases?

A When she first contacted me about the possibility of being involved in this matter, I don't believe so.

Q You did prepare a report in the Northwest Laborers case?

A Yes, I did.

Q But you were contacted about the Iron Workers case before preparing that report?

A I believe that's the case.

(Ripps Exhibit 1 and 2 marked.)

BY MR. PICCIONI:

Q The court reporter just handed you copies of Exhibits 1 and 2. Are these or at least these appear to be copies of your two reports respectively in the Iron Workers and Northwest Laborers case?

A Yes.

MS. MARCHANT: Can I just note that I think there was an additional report that he filed in

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Northwest Laborers. Wasn't there a supplemental report?

THE WITNESS: I believe that there was.

MS. MARCHANT: I just want to make sure that you are accurately reflecting what his report was in Northwest Laborers.

MR. PICCIONI: Okay.

Q Now the Northwest Laborers report, you prepared the Northwest Laborers report before you prepared the Iron Workers report?

A Yes.

Q And were you given any particular instructions about any changes or additions to the Northwest Laborers report that you were to make in the Iron Workers report?

A No. My recollection is that in being asked to make a report on the Iron Workers matter there was no reference to the Northwest Laborers matter.

Q But the two reports are different?

A Yes, they are different.

Q And what was your thinking in adding portions to the Northwest Laborers report in creating the Iron Workers report?

MS. MARCHANT: Objection.

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THE WITNESS: Would you repeat that, please?

BY MR. PICCIONI:

Q I will back up. There are issues that are -- am I correct that there are issues which are addressed in the Iron Workers report that are not addressed in the Northwest Laborers report?

A I believe that's true. I would have to reread the Northwest Laborers report, which was done some time ago, to answer that with assurance.

Q Well, why don't we do that.

A All right.

Q Okay.

MS. MARCHANT: He did file a supplemental report in Northwest Laborers. I don't know if that's included here. If it is not, this might not be the totality of the opinions that he gave in that case.

THE WITNESS: This was the first of my reports in Northwest Laborers. There was a subsequent report.

BY MR. PICCIONI:

Q Okay. That is not included in Exhibit 2 at the end?

A I'm sorry, you are absolutely right. It's there.

Q I just noticed it myself. So are you prepared, then, to describe to me in general terms

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what the differences are between the Iron Workers report and the Northwest Laborers report?

THE WITNESS: Could I have a moment or two to review the supplemental report?

MR. PICCIONI: Sure.

THE WITNESS: I'm ready. Would you repeat your question, please.

BY MR. PICCIONI:

Q The question is if you can describe to me additions, that is to say additional issues addressed in the Iron Workers report that were not addressed in the Northwest Laborers report.

A I didn't really think about the issues in that way. In the Northwest Laborers report I was given certain materials to review; namely, a Mr. Roberts' report in the Northwest Laborers matter and the transcript of his deposition. I reviewed and commented on those.

In this instance I was given a lot more material, specifically Mr. Roberts' report in this matter, which is quite different from his report in Northwest Laborers, as I recall, and reports of other experts, so the materials I was working with were different, so that's why my conclusions are different.

Q Am I correct that in the Iron Workers

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report there is treatment of the issue of smoking cessation programs which is not in the Northwest Laborers report?

A That's correct.

Q Why did you add that?

A My recollection is that in the case of the Northwest Laborers report I was asked to comment strictly or specifically on Mr. Roberts' report. In this matter I was asked to comment on the matter of whether there were steps that the Iron Workers could have taken, that the trustees could have taken to reduce or limit their healthcare expenditures.

Q So you were provided with additional direction?

A Yes.

Q Are there any existing drafts of the Iron Workess report?

A No, not that I'm aware of.

Q In preparing the report was there a process in which counsel for the defendants in this case were able to review work that you had done prior to finalizing, your finalizing that report?

A Yes.

Q Can you describe that process?

A I prepared a draft of my report. It went

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through an internal peer review process. After that it was shared with Ms. Marchant. I believe that she offered some ideas and commentary for it, which led it to being further revised to reflect those agreements with which I agreed, and that was the process for producing the final report.

Q But as far as you know, there is no written record of what those suggested changes were?

A No, I don't believe so. I think that we spoke about those over the phone.

Q Do you recall the portions of the report that were affected by those telephone conversations?

A I'm sorry, I don't recall at this point.

Q Is there a sense in which it is fair to say that the report that you prepared for the Northwest Laborers case is based upon earlier reports that were prepared in other healthcare payer tobacco litigation that you have been involved in?

A No, I don't think that's a fair statement.

Q So if I were to, say, compare a report that you prepared for -- well, let me back up a second. You have been, were identified as an expert witness in the Texas litigation, the state litigation against the tobacco companies; is that correct?

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A That's correct.

Q Also Mississippi; is that correct?

A That's correct.

Q And you prepared expert reports in each of those two states?

A Yes.

Q So if I were to take the report that you prepared in either of those two states and compare it to this one I wouldn't see similarities?

A This one being?

Q Excuse me, the Northwest Laborers case report.

A I don't believe you would see many similarities, if any.

Q Which of those two reports came first, Texas or Mississippi?

A Mississippi was first.

Q And who drafted that report?

A The Mississippi report?

Q The Mississippi report.

A I drafted that report.

Q By drafted I mean first reduced to writing thoughts or opinions that you had in the case.

MS. MARCHANT: Is that a question?

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BY MR. PICCIONI:

Q Does your prior answer hold if my definition of drafted is first reduced to writing?

A I believe it does. However, we are talking about the case of the Mississippi report, a report that was drafted, I believe, over a year ago, and I do not recall the details of the drafting process.

Q You don't recall if defense counsel in that case were involved in that drafting process?

A Oh, yes, defense counsel was involved in the production of that report. Defense counsel was also involved in the production of this report.

Q Understood. But the actual creation of a written document, the first draft, if you will, in the case of the Mississippi report, was that done by yourself or by defense counsel?

A I'm sorry, I just don't recall. It was well over a year ago, and I don't remember who did the first draft.

Q Have you been asked to prepare a supplemental report in the Ohio trust fund case?

A I have not been asked to prepare such a report.

Q Have you been asked to do any additional

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research or thinking?

A Yes.

Q And who has asked you to do that?

A Ms. Marchant has asked me to do that.

Q Could you describe to me what your understanding is of what that additional work will be?

A She has asked me to review a number of transcripts including the transcript of Mr. Roberts' deposition, a transcript of Mr. Wershbale's deposition are the two that that I recall in particular, as well as a large number of documents that were produced in connection with this matter.

Q Have you seen those documents yet?

A I've seen a lot of them. I don't believe I've seen them all.

Q What are the ones that you've seen that again concern this additional work that you've been asked to do for this case?

A There are reports of trustees meetings, of minutes of trustees meetings; reports produced by administrators and consultants, reports produced by insurers.

Q Were you given any particular direction for your analysis of these materials?

A No, I was not given any particular

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direction. I was asked to review them and see if there were relevant issues there that appeared, keeping that in mind, and also to see if there are materials that support my initial report, and there are.

Q And what are those?

A Those are discussions in trustees meetings and recommendations from consultants regarding cost-containment steps that could be taken and in fact in some instances were taken by the funds. And there may be other things too. Those are the ones that occur to me. It is a voluminous, a lot of material.

Q Am I correct that one of the things that you are looking for is any information relating to the issue of cost containment?

A Yes, that's correct.

Q Smoking cessation also?

A Yes.

Q Mr. Ripps, have you ever been engaged professionally by a firm or a concern based in the state of Ohio?

A Not that I recall.

MS. MARCHANT: Are you referring to Mr. Ripps personally or to --

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MR. PICCIONI: Yes.

THE WITNESS: Could you ask me that question again? I want to make sure I give you the right answer.

MR. PICCIONI: You could read it back.

(Record read.)

THE WITNESS: I am satisfied with my answer. I think it was accurate.

BY MR. PICCIONI:

Q If I could direct your attention, Mr. Rapp, to the first page of your report in the Iron Workers case. Could you read the last paragraph on the page, the one with the number 1 next to it.

A "The report prepared by Mr. Stanley A. Roberts, FSA, MAAA, dated October 8th, 1998 contains a number of weaknesses, the cumulative effect of which makes his estimates of smoking attributable expenditures unreliable for the intended purposes of the estimates."

Q Is it fair to say that your determination of unreliability is reached in the light of what you believe are the intended purposes of the estimates?

A Yes.

Q And what do you believe are the intended purposes of the estimates?

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A I believe the intended purposes of the estimates are to be used as a basis for damage calculations in this proceeding.

Q Would you agree that in general that the assessment of the reliability of a methodology depends in part on the precision of the required product of that methodology?

MS. MARCHANT: I object. It is vague.

THE WITNESS: Yes, in general I would agree with that.

BY MR. PICCIONI:

Q So that methods that are unreliable in producing a result of a very high level of precision might be reliable when the result doesn't have to be so precise?

MS. MARCHANT: Objection.

THE WITNESS: That would of course depend on the circumstances, but in general it would.

BY MR. PICCIONI:

Q For example, if I want to replace the cable in that beautiful bridge over there, a method that I might use in determining the length required is different from the method that I might use if I'm taking an afternoon sail to Treasure Island --

MS. MARCHANT: Objection.

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MR. PICCIONI: -- and want to know how long it is going to take.

MS. MARCHANT: I object to the foundation and the form of that question.

THE WITNESS: Yes.

BY MR. PICCIONI:

Q Is it also true, in general, in your opinion that the reliability of a method should be evaluated in the light of the comparative severity of the consequences if that estimate is erroneously high compared with erroneously low?

MS. MARCHANT: Objection. It is compound and vague and ambiguous.

THE WITNESS: I'm not sure I understand that one. That was a hard question.

MR. PICCIONI: Try reading it back.

(Record read.)

MS. MARCHANT: The same objections.

THE WITNESS: Again it would depend on the circumstances, but that's one of the considerations that should be considered in evaluating the reliability of the method.

BY MR. PICCIONI:

Q Say, for example, if the circumstances are that an underestimate is tolerable but an

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overestimate isn't, that under such circumstances the reliability of a methodology might be acceptable where if the reverse were true it would not be?

MS. MARCHANT: Objection. Again, vague and ambiguous and an incomplete hypothetical.

THE WITNESS: Again it would depend on the circumstances, but that is a possibility, and it is one of many possibilities that would need to be considered in evaluation of the reliability of the method in a particular circumstance.

BY MR. PICCIONI:

Q So is it fair to say, then, that in rendering this opinion about the reliability or unreliability of Mr. Roberts' methods you have in mind both a necessary degree of precision and a concept of the comparative severity of developing an estimate that is too high versus too low?

MS. MARCHANT: Objection. It is compound.

MR. PICCIONI: I mean both.

THE WITNESS: In reaching this opinion I did not consider the seventh factor which is the relative severity of an underestimate versus an overestimate. My focus rather was on the degree of precision or imprecision inherent in my methodology.

BY MR. PICCIONI:

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Q How precise did you think it needed to be?

A I don't understand that question.

Q Well, did you think that the intended purpose of the estimate was to determine damages to the nearest dollar?

A No. My understanding is that damage estimates should be factually related to the historical record to the extent that they can be, and that with respect to events that have not yet occurred that they should be estimated based on that historical record and any other circumstances that can reasonably be brought to bear in extrapolating that historical record in the future.

Q By historical record do you mean all information about past events that could possibly bear upon the estimate?

A No.

Q Mr. Ripps, one of the documents on the list of documents on which you -- well, the list of documents attached to your Ohio report.

(Ripps Exhibit 3 marked.)

BY MR. PICCIONI:

Q A document that I think was just handed to you by the reporter, "Actuarial Standard of

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Practice No. 23, Data Quality" --

A Yes.

Q -- to what extent did you rely upon this document?

A I relied upon it in general, and in particular I relied upon Section 5 which is the "Analysis of Issues and Recommended Practices." And more specifically I relied on paragraph 5.2.

Q Let's read that for the record.

A The title is "Use of Imperfect Data." "The actuary may be aware that the data are incomplete, inaccurate, or not as appropriate as desired. In such cases, the actuary should consider whether the use of such imperfect data may produce material biases in the results of the study, or whether the data are so inadequate that the data cannot be used to satisfy the purpose of the study."

Q Without going through my painful series of questions back there, is it fair to say that the acceptability of imperfect data, according to this provision, should be evaluated in the light of the purposes that data is intended to serve?

A It is fair to say that the, that evaluation should be evaluated in light of the purposes of the study for which the data is being

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used.

Q Does this provision 5.2 mean that an actuary can never use imperfect data?

MS. MARCHANT: Objection. Foundation.

THE WITNESS: No.

MR. PICCIONI: What's the missing foundation?

MS. MARCHANT: Well, he didn't actually write this document, so he may or may not know what it means.

THE WITNESS: Did you hear my answer?

BY MR. PICCIONI:

Q I heard the answer. That's your interpretation of this section?

A That's correct.

Q Based on your interpretation of this section or any other bases you have for reaching an opinion on this matter, when is it acceptable for an actuary to use imperfect data?

A That's a question that's not possible to answer. It has to be answered in light of specific circumstances, but clearly the standard allows for that possibility.

Q Is there such a thing as perfect data?

A Hypothetically, I guess there could be something such as perfect data.

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Q But the hypothetical you are entaining, I take it, is not something frequently realized in the actual world?

A I think that's a fair statement.

Q Do you think that, to qualify, unbiased actuaries acting in accordance with the standards of their profession could reach different conclusions about whether a given set of data is sufficiently reliable to serve a given purpose?

A Yes.

MS. MARCHANT: Objection. It is an incomplete hypothetical.

BY MR. PICCIONI:

Q Could two actuaries with the qualifications I just made disagree on what the purposes of such a study were?

MS. MARCHANT: Objection. It is an incomplete hypothetical.

THE WITNESS: That is possible; however, if the study is well done, the purposes should be clearly stated, so that is less likely.

BY MR. PICCIONI:

Q If I could just ask you to read the provision that follows 5.2 -- 5.3.

A The title is "Reliance on Data Supplied

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by Others." "The actuary may rely on data supplied by another. In doing so, the actuary should disclose such reliance. The accuracy and comprehensiveness of data supplied by others are the responsibility of those who supply the data. However, the actuary should, when practicable, review the data for reasonableness and consistency. The nature and extent of the review should be based on the circumstances of the actuarial assignment."

"When such a review is performed --

Q Unless counsel has an objection, I would think that's all the part I wanted, simply in the interest of keeping this record in some finite time.

Was it a concern of yours in reviewing Mr. Roberts' report in the Iron Workers case that he was not in compliance with this provision?

A Which provision?

Q 5.3, including the part which you did not read into the record, so feel free to review it.

A Page 7 of the report contains the following statement. On page 9 of his report Mr. Roberts states, quote, We assume the data from each trust fund to be complete and accurate, close quote. There is no indication that Mr. Roberts tested the completeness and accuracy of the data supplied by

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the funds, nor is there any indication that anyone tested the accuracy of the data with respect to diagnosis, gender, dependence status and age which appear to be important elements of Mr. Roberts' calculations.

Is that responsive to your question?

Q Well, let me drive the nails into my own coffin here and just -- I take it that by that in your section of your report you at least were calling into question whether Mr. Roberts was in compliance with Section 5.3. Is that correct?

A That's correct.

Q Unless you would find it objectionable, if we could just have you read the last paragraph of 5.3.

A "There may be situations where it is impossible or impracticable to perform a sufficient review of the data. In these instances the actuaries should disclose that the actuary has not sufficiently reviewed the data and should disclose any resulting limitation in the use of the actuarial work product (see subsection 6.2)."

Q And it is your opinion that Mr. Roberts is not complying with that paragraph when he states: We assume -- quote, that we assume the data from each

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trust fund to be complete and accurate, unquote?

MS. MARCHANT: I object. That paragraph may not apply at all.

THE WITNESS: The paragraph that you are asking me to respond to is the one that starts, "There may be situations"?

BY MR. PICCIONI:

Q Um-hm.

A I don't believe that I had that particular paragraph in mind when I wrote the statement on page 7 of my report.

(Ripps Exhibit 4 marked.)

BY MR. PICCIONI:

Q Mr. Ripps, I think the court reporter just handed you a document Exhibit 4. Can you describe this document and read the title.

A This is entitled "Healthcare Benefits Survey 1998" by Foster Higgins.

Q Is this one of the documents on which you rely for some of your opinions in this case?

A Yes.

Q Mr. Ripps, who are the authors of this report including co-authors?

A The primary author appears to be David Rahill, principal, Foster Higgins.

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Q Is this the entire report?

A To my knowledge this is the entire report.

Q Have you seen a bound copy of this report?

A I don't recall seeing a bound copy.

Q So you reviewed a photocopy that was given to you by someone?

A I believe that's correct.

Q Who was that?

A I don't recall.

Q This is a document which is -- is this document part of a collection of documents you have for other purposes or just for the purpose of this litigation?

A I believe this may be a document that I received in conjunction with my work on the litigation in Texas or Oklahoma, but I am not entirely certain.

Q Mr. Ripps, what is a Taft-Hartley health and welfare fund?

A A Taft-Hartley health and welfare fund is a health and welfare fund established under the auspices and governed by the Taft-Hartley Act.

Q So if I referred to Taft-Hartley funds, there won't be any confusion in your mind about what

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I'm referring to?

A That's correct.

Q Exhibit 4 appears to be a survey of benefit plans. Do you agree?

A It appears to be a survey of health benefits and cost management in the '80s.

Q But cost management by employee benefit plans; is that right?

A That's correct.

Q Is a Taft-Hartley health and welfare fund an employee benefit plan?

A For some purposes it could be defined as an employee benefit plan. It has special characteristics.

Q Can you show me in this document where it describes what benefit plans were surveyed in preparing this study?

A It is a bit difficult because there are no page numbers here; however, you will see a page which is labeled Survey Demographics. That page and the following page deal with the universe that was surveyed.

Q Do you know if that universe included any Taft-Hartley health and welfare plans?

A No.

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Q What opinion in your report is based in part or entirely on information contained in document Exhibit 4?

A Primarily paragraph 2 on page 2 of my report and page 9 of my report.

Q Page 9 in pretty much its entirety?

A Yes.

Q So the statements in those two portions of your report are based in part on the observations reported in Exhibit 4?

A Yes, in part.

Q Based in part, then, on the data in Exhibit 4?

A Yes, in part.

Q And the statements that you are making in your report are intended to apply to Taft-Hartley health and welfare funds; is that correct?

A Intended to apply to the funds at issue in this matter which are Taft-Hartley funds.

Q Is a report based upon data obtained from a survey of benefit plans that does not include Taft-Hartley health and welfare funds a source of perfect data upon which to base statements which you intend to apply to Taft-Hartley health and welfare plans?

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MS. MARCHANT: I object. Are you saying that this report has no Taft-Hartley funds in it? Because that mischaracterizes his testimony. He never said that.

MR. PICCIONI: I will go back.

Q Is a source of data which you do not know to be based upon a survey of or even to include a survey of Taft-Hartley health and welfare plans a source of perfect data upon which to make inferences about Taft-Hartley health and welfare plans?

MS. MARCHANT: I object. It is vague and ambiguous, and I object to the phrase "perfect data" because I don't know what it means.

THE WITNESS: I was about to say something along the same lines.

I wouldn't characterize it as perfect data; however, if it is used in conjunction with other information which is relevant, it may be useful and relevant information, useful and relevant data.

BY MR. PICCIONI:

Q You said may be. Do you mean in part may be depending upon the purposes for which that data is being used?

A I mean may be depending upon the purposes for which it is being used and may be depending upon

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other data information or perspectives made which may be brought to bear in the use of that data.

Q At the bottom of page 9 you end with a sentence. Could you read that, please?

A "The savings achieved through these programs varied, but there have been well-documented savings of 25 percent to 30 percent of aggregate health benefit costs by using such programs."

Q Is it your opinion that by using such programs the Taft-Hartley health and welfare funds in this case could have achieved savings of 25 to 30 percent of aggregate health benefit costs?

A I have not yet reached such an opinion.

Q The use of the word "yet" suggests to me that you might do so in the future. Is that right?

A That is correct.

Q And is that one of the things that you've been asked to do?

A Yes, it is.

Q When?

A I'm sorry, I don't understand your question.

Q You've been asked to do it by when?

A My understanding is that I've been asked to do that by the end of this year.

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Q What is the basis for your statement on page 9, quote, most of these programs, among others, were available to the funds at approximate -- excuse me, at the approximate times indicated in the following table?

A There are three bases for that statement. One is the Foster Higgins report, the second is my own personal knowledge of these programs and the time of their availability, and the third is my reading of the minutes of some of the trustees meetings. Those are the primary bases.

Q Mr. Ripps, have you ever provided actuarial services to a Taft-Hartley fund?

A For most of my career I worked for Aetna Life Insurance Company, and Aetna Life Insurance Company provided such services to Taft-Hartley funds.

Q But while you were at Aetna were there any particular accounts or projects that you were involved with where you specifically remember that the client was a Taft-Hartley fund?

A I left Aetna in 1989, so it's been over ten years and my recollection is vague on that score. However, I do recall our having been heavily involved in collective bargaining processes that involved negotiations between unions and Chrysler, I believe;

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Boeing, I believe; and Ford, I believe. In addition, I know that there are others, but my recollection is less specific about those.

Q Is it your opinion that the workers at Boeing, Chrysler and Ford participate in Taft-Hartley health and welfare plans by and large?

A Some of them do. I don't know whether most of them do.

MS. MARCHANT: When you are getting to a good breaking point, I would like to take a break soon.

THE WITNESS: Me too.

MR. PICCIONI: Let's do it.

(Recess.)

MS. MARCHANT: I wanted to clarify a couple of things just for the record. You asked him questions earlier about the difference between his Ohio report and Northwest Laborers report. I just wanted to say it was my understanding that the purposes of those reports were slightly different. The reason the reports were filed in Northwest Laborers was strictly damages model reports, and that may be the reason that his report is slightly different there, not that -- it does not necessarily reflect the entirety of his opinions in Northwest Laborers, and I think that is reflected in his Northwest Laborers report.

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MR. PICCIONI: Okay.

MS. MARCHANT: Secondly, you had asked Mr. Ripps some questions about additional work that he was doing and when he was planning to finish that by. That work I believe is largely dependent upon we are still waiting for documents from the actuaries, and Mr. Ripps will not be able to review those documents until we get them, so it is not that we are asking him to do more work, we are simply asking for the documents we need to be able to finish the documents he is doing.

BY MR. PICCIONI:

Q Mr. Ripps, although you don't necessarily remember the details of whether or not you had specific prior involvements with Taft-Hartley funds, am I correct that to the extent there were such involvements they are not the basis for your statement here that most of these programs were available to the funds at the approximate times indicated in the following table?

A The basis for that statement is with respect to my experience, the fact that I was responsible for Aetna's cost-containment programs nationally during the 1980s, those programs were available both to employers and to Taft-Hartley funds.

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Q And are you saying that most of these programs were appropriate for Taft-Hartley funds at the decades given?

A I don't believe that I've said that.

Q So some of them might be inappropriate for a Taft-Hartley fund?

A I don't believe I've said that either. The determination of what program is appropriate and when it might be appropriate needs to be made in light of the specific circumstances of a particular fund.

Q How popular are HMOs among Taft-Hartley funds?

A That question is too broadly phrased for me to answer it.

Q Among the named class representatives in this case, do you know which, if any, use HMOs?

A As I recall my reading of the consultant reports and the minutes of the trustees meetings, I believe that some of the funds made HMO options available to the fund participants and beneficiaries; however, I don't recall which ones and when.

Q When you list health maintenance organizations with primary gatekeepers as one of the specific programs on this list of cost-containment measures, are you implying that were Taft-Hartley

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funds to contract with HMOs they would probably save money?

A It depends on the circumstances.

Q Does that answer apply to each of the items on this list?

A Yes.

Q And at the time you drafted this report did you know whether those circumstances obtain?

A I'm sorry, for whom?

Q For any of the trust funds in this case.

A I want to make sure I understand your question. Those circumstances are circumstances which would result in savings to the funds by adopting these programs?

Q Yes.

A No.

Q As you say, the pages of the Foster Higgins report, Exhibit 4, aren't clearly numbered. But page 28 seems to be. If you can start there and go forward three pages there is a section on health maintenance organizations, correct?

A Correct.

Q In a general sense, is it your opinion that the observations that are summarized here are applicable to the Taft-Hartley fund?

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A I think you need to be more specific as to which observations.

Q How about the first paragraph under the section entitled "HMO Cost"?

A The first paragraph.

Q Yes, particularly the sentence that begins with the word "while." Maybe you should read that into the record.

A "While this is a lower rate of increase than was seen in indemnity plans, 59 percent of respondents report the premiums which some HMOs are charging are as high as or higher than their indemnity program rates."

Q Do you think that statement probably applies to Taft-Hartley funds?

A I don't know.

Q Am I correct that an indemnity program rate would be the amount that a self-insured Taft-Hartley or self-funded Taft-Hartley would be paying for a participant?

A Well, it might be the amount that is self-funded the Taft-Hartley fund is paying or it might be the amount that a fully insured Taft-Hartley fund is paying. The reference here is to premiums, so it is a little bit vague as to precisely what's meant.

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Q In the context of Taft-Hartley, when you say fully insured, are you operating under the assumption that the premiums paid for that kind of insurance are experience rated?

A Again it depends on the circumstances. In many instances they are experience rated.

Q Are HMO premiums experience rated?

A In some instances they are experience rated. That is not as common. It has not been as common for HMOs as it has been for indemnity programs.

Q Why is that?

A I don't know all the reasons, but I can tell you some. One is that the federal HMO Act which was passed, I believe in 1972, but I am not sure, to encourage the growth of HMOs restricted HMOs that wished to be federally qualified from experience rating. In addition, the tradition of HMOs was not to experience rate but rather to community rate, and as a result many HMOs did not have the infrastructure in place that allowed them to experience rate.

Q On the next page, also not numbered, of Exhibit 4, the first full paragraph refers to "recently enacted federal legislation." If you know what federal legislation is being referred to there, do you know if that changes the picture you just

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described?

A I'm not entirely sure what federal legislation is referred to there, but I believe that it did change the picture that I've just described.

Q Page 18 of this document has a legible page number. I would like you to turn to the page following. The second paragraph under the heading "Mental Health and Substance Abuse Benefits" shows some underlining. Is that yours?

A No.

Q Do you think that the statements made in this section underlined or otherwise have particular relevance to the issues in this case?

MS. MARCHANT: Objection. It is vague because --

MR. PICCIONI: That's true.

Q Are you relying on any of the statements in this section as a basis for your opinions in this case?

A In part I am relying on some of the statements made in this section.

Q Which part?

A I'm sorry, I didn't hear.

Q How are you relying on which statements?

A They relate specifically to the bullet on

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page 9 of my report which reads "Managed Mental Health/Substance Abuse."

Q But not because you consider smoking to be an example of substance abuse?

A That's correct, that is not because I consider smoking to be substance abuse.

MR. PICCIONI: I am going to hand the court reporter -- I guess we can mark these as the next three exhibits.

(Ripps Exhibits 5, 6 and 7 marked.)

BY MR. PICCIONI:

Q Mr. Ripps, what are the -- well, the court reporter has just handed you, I believe, three reports. Could you describe them? Read the titles in abbreviated fashion, if you wish.

A Yes. These are reports by Hewitt Associates for 1995, 1996 and 1997, and in each case the title is Health Promotion Initiatives/Managed Health Provided by Major U.S. Employers.

MR. PICCIONI: Off the record for a second.

(Discussion off the record.)

BY MR. PICCIONI:

Q Do you know what are the, quote, major U.S. employers, unquote, referred to here in the titles of these reports?

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A They are described by Hewitt Associates as 1,050 major employers in 1995.

Q You are reading from Exhibit 5?

A I am.

Q And are you relying on anything in any of these reports as a basis for your opinions about what Taft-Hartley funds in this case could have done to reduce smoking among fund beneficiaries?

A Yes, in part.

Q Do you know for a fact that any of the -- well, strike that.

Do these reports describe actions taken by benefit plans?

A They describe, as I understand them, actions taken by the employers, some of which relate directly to their benefit plans.

Q So am I right that the parts of these reports that you are relying upon are the parts that refer to the actions that employers took through changes in their benefit plans?

A No, I don't think that's correct.

Q Can you give me an example of a program discussed in, say, Exhibit 5 whose purpose is to reduce smoking prevalence among employees that doesn't involve the benefit plan but is something you think

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has relevance to the Taft-Hartleys in this case?

A One such example is described on page 4 of Exhibit 5.

Q Specifically?

A Specifically health risk appraisals.

Q But I take it you're saying that these are things that Taft-Hartley funds could do also?

A That is correct.

Q But they couldn't do everything that's in these reports; is that correct?

A I'd have to look through here more carefully to answer that question.

Q Let's say, for example, on page 10 -- would you believe page 12. Clearly, these don't all relate to the issue of smoking, but nevertheless, do you see some of these as being programs that a Taft-Hartley fund could not implement; for example, an on-site or employer-owned fitness facility?

A I think that would be difficult, I think, for a Taft-Hartley fund to implement, although I suppose it would be possible for a fund to develop, own and operate such a center for its members.

Q How about the last one, example given, smoke-free workplace?

A I suppose it would be possible for a

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union to bargain for that as part of their workplace conditions. I don't think it would be possible for the fund, a welfare fund as such to do that.

Q If we look at page 10 of Exhibit 5, am I reading this correctly that this survey of in this case 346 employers found that 10 percent reimbursed for smoking cessation programs?

A I don't think that's the way to read this. I think the survey was of 1,050 employers, and 346 of those 1,050 reported programs of this sort.

Q You mean and of those 10 percent were smoking cessation programs?

A Of those 346, ten percent included reimbursement if there were smoking cessation programs that's correct.

Q So of the 1,050 employers surveyed, can you infer what percent reimbursed for smoking cessation programs, roughly?

A Roughly three percent, I would think.

Q Now here is the hard part. Let's look at Exhibits 6 and 7 and specifically at page 6 of Exhibit 6 and page 7 of Exhibit 7. Do you find there analogous data?

A Yes.

Q And what are those percentages?

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A With respect to what?

Q Smoking cessation programs reimbursement.

A The prevalence of reimbursement for smoking cessation appears to be increasing slightly each year over 1995. '96 is slightly higher than '95, '97 is slightly higher than '96.

Q But again, let's say in 1997, again it is 13 percent of the 364 and substantially less of the total of 1020. Is that how you are interpreting this value?

A Yes.

Q Do the calculation. Make the record clear.

A Roughly five percent.

Q Going back to Exhibit 5, the 1995 report. This may require some figuring. If you look at the tables on pages 7 through 9, can you come up with a percentage of the companies surveyed that assessed the smoking status of their employees in any manner or in any of the ways indicated on the tables on those pages? I'll save time. You can't, I just realized, because the number of employers changes for each table. We are going to get very confused if we try to do that, so --

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MS. MARCHANT: I know I will. I'm already confused.

BY MR. PICCIONI:

Q I mean if you can make a rough guess.

A It is difficult to answer your question, beyond the fact that the number of employers changes is that the assessment for smoking is often included within the types of programs mentioned on page 6 also, and in addition on page 4.

I need to redo that answer. That wasn't quite responsive. I should have referred only to page 4 rather than to page 6 in this instance.

Q All right.

(Ripps Exhibit 8 marked.)

BY MR. PICCIONI:

Q The court reporter just handed you a copy of a document. Could you read the title into the record?

A "Review and Evaluation of Smoking Cessation Methods: The United States and Canada 1978 through 1985."

Q Is this one of the documents on which you rely for some of your opinions in this case?

A Yes, in part.

Q How did you come to learn of the

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existence of this document?

A I don't know the answer to that.

Q Do you see that the pages are Bates stamped?

A Yes, I do.

Q But you don't know if the copy from which this copy was made was provided to you by the defendants in this case?

A I believe that it was provided by the defendants, but I don't -- I have seen lots of materials. I am just not entirely sure where this one came from.

Q But you believe this to be a reliable source of information about smoking cessation methods; is that correct?

A This is a large report, and I did not want to endorse everything that's in here and make a blanket statement.

Q But you did use it in developing your own report?

A I did.

Q And in that sense relied upon some of the information that's in this report?

A That is correct, I relied upon some of the information that's in this report.

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Q Do you know if there are any earlier reports by this author?

A I do not.

Q Or later ones?

A Again I do not.

Q On page 2 of the report, the Bates number shows up a little better, 3479, in the paragraph labeled "Lung Cancer," the second to the last sentence can you read that beginning with the word "certain"?

A "Certain occupational exposures (e.g., asbestos) can act synergistically with smoking to increase the incidence of lung cancer".

Q Do you have an opinion about whether that's an accurate statement or not?

A I have no expert opinion on that statement. It is beyond my field of expertise.

Q Let's turn to page 7 in this report. On the second column the second full paragraph beginning with the words "a review," if you could just read that first sentence and then skip to item 2, if that's all right. You can read them both if you want.

A "A review of smoking control programs conducted during the last few years leads the authors to conclude that certain conditions improve success." Skipping item 1. "Item 2, payment, as in commercial

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programs which intensifies commitment."

Q What do you understand the author to mean by that statement?

MS. MARCHANT: I object. It calls for speculation.

THE WITNESS: I'm not sure what the authors mean. I could speculate. Would you like me to speculate?

BY MR. BACCIONI:

Q Well, did you review this report in preparing yours?

A Yes.

Q Do you recall reading this paragraph?

A Not specifically.

Q Do you know what's referred to here as a commercial program?

A Yes, there is a section in here that talks about commercial programs. It begins on page 30.

Q And am I correct that those are programs offered by private organizations who are paid by smokers to help them quit smoking?

A Yes, in general that is my understanding.

Q Would it be speculation to infer that what the author is saying here in item 2 is that when

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a smoker pays him or herself for the treatment, their commitment to quitting is intensified?

A I think that would be speculation, but I think it is a pretty good speculation.

Q Okay. Do you think that's true?

A I don't know. I haven't studied these programs in depth, and it is really not within my area of expertise as to exactly what conditions lead to the improved success rates for smoking cessation programs. I might add, however, that I don't think that payment necessarily implies full payment and that the motivational effects that the authors are positing here could well be achieved through some sort of cost sharing arrangement.

Q Now in your report, the Iron Workers case, on page 10 the last paragraph, you do render some opinions about quit rates?

A Yes.

Q Is that correct?

A Yes.

Q And these are quantitative opinions?

A Yes.

Q Are these opinions based in part on some of the information that's contained in Exhibit 8?

A Yes.

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Q Do you know whether the quit rates described in Exhibit 8 are, and that you are referring to here in your report, are based upon the participants' own reporting of their smoking status?

MS. MARCHANT: There are a lot of quit rates reflected in Exhibit 8, so are you talking about all of the quit rates reflected in Exhibit 8 no matter what program they are talking about?

MR. PICCIONI: No, I am looking at the quit rates on page 10 of his report.

THE WITNESS: The quit rates reported for smokeless, as I understand them, are self-reported quit rates.

BY MR. PICCIONI:

Q You are referring to a particular page of Exhibit 8?

A Oh, yes. Page 34. The second paragraph.

Q If you turn to page 8 of Exhibit 8, the first full paragraph on the page beginning with the number 1, could you read that?

A "Validity of self-reports of smoking behavior remains the leading problem in the evaluation of cessation results. By the use of physiological measurements numerous investigators have shown that up to one-fourth of the people claiming abstinence were

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not telling the truth. Fortunately, this is the area in which the most progress has been made with the availability of physiological tests to validate abstinence. More and more programs are making the effort to use these tests to check self-reports, but it is still inconvenient and costly for community programs and individual investigators to use them. Some investigators have used informants or observers to corroborate self-reports, but their value has been questioned. All investigators, as well as practitioners, should consider the use of physiological measures to validate self-reports.

Q Is it your opinion that the quit rates for the Ford Motor Company are immune to the problem of self-reporting described on page 8?

A No.

Q Do you agree that the author of this report expresses the opinion at least once that a minimum follow-up period for a reliable assessment of the effectiveness of a smoking cessation program is six months?

A Could you give me a page reference there.

Q Well, let's look, for example, on page 8 the paragraph that's numbered 3, a couple of sentences into it.

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A Yes, I agree.

Q Why is it that a six month follow-up -- strike that.

Why is it that, quote, less than six months of follow-up has questionable value, in your opinion?

MS. MARCHANT: I object. You asked what the opinion was of the person expressed in this document, and now you are asking him as if it is his opinion.

BY MR. PICCIONI:

Q Oh, I am sorry. Do you agree with that, the view that a year follow-up is best, but six months is acceptable. Less than six months has questionable value?

A I don't know. That's really outside the area of my expertise. If you would like me to speculate why I think this author stated that opinion, I will do so.

Q So you think that could be -- you don't know if that's true or not?

A That's correct. I've not studied that particular issue.

Q I take it, then, you haven't studied the issue of whether even a year of follow-up provides a reliable indicator of the long-term effectiveness of

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the smoking cessation program?

A That's correct.

Q On page 10 of your report, the last sentence reads: "By making use of smoking cessation programs, it appears that the Funds could have significantly lowered the number of smokers covered by them," meaning the funds?

A Yes.

Q What did you have in mind when you used the words or the phrase "significantly lower" in terms, quantitative terms?

A In rough quantitative terms perhaps 25 to 35 percent.

Q And you are referring there to permanent quit?

A I'm drawing an inference there that one-year quit rates would translate pretty well into permanent quit.

Q And that inference is based upon what knowledge or expertise?

A Well, it is based on this report. For example, he says a one-year follow-up is best. It is not my expertise, but it is reliance on other experts who have studied the issue.

Q But, not to be difficult, the author of

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this report does not say that Taft-Hartley health and welfare funds could have significantly lowered the number of smokers they cover by making use of smoking cessation programs; is that correct?

A That's correct.

Q That's your statement?

A That's correct; to my recollection that's what this report says, but, yes I think that's correct.

Q So you are not simply relying upon the opinion of others you consider to be experts in formulating the opinion that is in the last sentence on page 10 of your report; is that true?

A That's true. Let me explain what I am relying on. There is evidence that effective smoking cessation programs are out there. There is evidence that at least one of these funds sponsored such a program. There is evidence that these programs can be effective in certain circumstances. And from that evidence I've drawn the inference that appears in my report.

Q Do you have an opinion about whether former smokers ever relapse after a year since quit?

A I have no expert opinion on that matter.

Q In the studies of the effectiveness of

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smoking cessation programs that are summarized here in Exhibit 8, can you think of any in which the quit rates of program participants are compared to the quit rates of smokers who did not participate in the program?

A I don't recall any such comparison.

Q If you will look on page 20. There is a table there, Table 1.

A Yes.

Q And then a paragraph that follows. I am going to ask you to read that paragraph.

A "The general finding to emerge from the various types of self-quitting studies is that people who self-select to quit on their own appear to succeed 16 to 20 percent of the time in being abstinent at 1 year. This finding is supported by statistics from national samples (page 4), which indicate that of those who try to quit, 20 percent report that they succeed. This may be used as a benchmark to measure results from interventions that include more than minimal guidance up to intensive treatment."

Q Do you agree with that statement, especially the last? Do you agree with the last sentence?

A I don't know. I have to think about that

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some more.

Q Well, do you agree that if a Taft-Hartley fund is contemplating providing coverage for a smoking cessation program, they might be interested or rather they should be interested in a comparison between the reported quit rates for that program and the quit rates of smokers who try to quit on their own?

A Yes.

Q Why?

A Depending on what is meant by "quit on their own" and what kind of assistance these people seek, it could bear on the question of what the fund's participation in such a program could accomplish.

Q Cost effectiveness, for example?

A Cost effectiveness, for example.

Q Page 36, the first full paragraph beginning with the name Gritz. Could you read that one, the first sentence.

A "Gritz and Jarvik, Russell and Schachter support the notion that nicotine is the critical ingredient in smoking dependence."

Q Do you have an opinion within the realm of your expertise about whether that's true or not?

A No.

Q If you turn to page 91 --

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A I am having difficulty doing that.

Q How about Bates No. 3566?

A In my copy they are sort of backwards. I will get there. I see it now.

Q You notice there is an annotation on that page there, an arrow pointing down?

A Yes.

Q Is that yours?

A No.

Q And this document has a number of these little hen scratches in it. They are not yours?

A That's correct.

Q And you don't know whose they are?

A No, I don't. Sorry.

Q In preparing your report did you rely upon the work of any other person acting as an assistant to you in reviewing documents?

A Yes.

Q And who is that?

A Ms. Laura L. Peck, P-e-c-k.

Q You don't know if these are her annotations?

A I do not.

Q 97. Maybe you might want to -- last paragraph on the first column, could you read the

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second sentence and place it in context.

A I can read it. I am not sure I can place it in context. "Unions representing Federal workers have generally praised the regulations." I can read it. I am not sure I can place it in context.

Q Do you know what is being discussed here in this section?

A This is in a section labeled "Examples of Company Smoking Policies."

Q In the first paragraph of that -- the second paragraph, sorry, of that section that's on page 96, it's even the third paragraph actually, there is a discussion of actions taken by the Johns-Manville Corporation in 1977. Do you see that?

A I do.

Q And there is a reference there to a decision or at least to an announcement that the corporation made a decision in that year or announced in that year that it would no longer hire smokers for its 8,000-person work force in asbestos operations. Do you see that?

A Yes, I do.

Q Is that something that a Taft-Hartley health and welfare plan could do?

A I don't think so.

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MS. MARCHANT: Could I just clarify, by that you mean refuse to hire smokers?

MR. PICCIONI: Yes.

Q On page 112, Bates number 3586, that paragraph at the bottom of the second column entitled "Summary and Comment," could you read that into the record and then tell me whether you agree with the statement in the last sentence.

"Surveys reveal that about one-third of U.S. companies have established policies on employee smoking. More companies are considering the adoption of smoking policies. Of those companies with policies, 85 percent have initiated their policies in the last 5 years. Fielding points out that virtually all policies to restrict smoking established before 1980 were adopted to avoid possible danger to products and equipment. He states that smoking policies to protect the health of workers is a phenomenon of the 1980s." You've asked me to tell you whether I agree or disagree with the last sentence. I don't know.

Q Do you know whether -- strike that.

MS. MARCHANT: Are you almost done with this document? I guess my question is should we break now for lunch or should we wait until you are done with this document?

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MR. PICCIONI: Why don't we wait until I am done with this document.

MS. MARCHANT: Is that all right with you?

THE WITNESS: It is.

BY MR. PICCIONI:

Q Let's take a look at page 124. That's Bates 3597 of Exhibit 8. There is a paragraph in the second column there that begins with the word "maintenance." You don't need to read it into the record, but if you'll just look it over and tell me which of the various measures that are indicated here are things that a Taft-Hartley health and welfare fund could do in relation to the participants in the fund, not its own employees.

A It would be difficult to impossible for a Taft-Hartley fund to put in place and enforce company policies regarding prohibitions and restrictions against smoking. It would, however, be possible for a union to bargain about that subject as a matter related to workplace conditions in the environment. With respect to education and cessation programs, incentives, support, those things I think could be provided by a Taft-Hartley fund.

MR. PICCIONI: Let's stop.

(Lunch recess.)

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BY MR. PICCIONI:

Q Mr. Ripps, I just wanted you to take a look at another document. If you could just read the title and date on this one.

A This is entitled "Smoking Cessation Programs in Occupational Settings 'State of the Art' Report, November 15, 1978."

Q And this is a document upon which you rely in part for your opinions in this case?

A Yes.

Q How is it you came to learn of the existence of this document?

A Again I am not sure.

Q Did you instruct someone to do a literature search for documents on particular subjects or how did you --

A We hadn't done literature searches because, as the Bates numbers on it, I suspect that this was supplied to us by Ms. Marchant or her colleagues.

Q Are you of the opinion that this is a reliable source of information about smoking cessation programs as of the publication date or the preparation date of this document?

A Once again I would not want to subscribe

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to everything that's in this report, but some of the things that are reported here I think certainly are reliable.

Q So those indicia of reliability are what kind of things?

A Well, I can't -- there is no index, no set indices, rather that reliability pertains to specific items in the report. If you would have said do you consider that statement reliable, I could say yes, I do or no, I have some doubts about it. But with respect to the report as a whole, I am just uncomfortable saying that the report as a whole and everything in it is reliable.

Q So what do you base your assessment of reliability on as it pertains to particular statements in the report?

A You need to look at a particular statement.

Q Well, let's say, for example, on page 3 the second sentence, if you can read that one.

A "Helpful methods have been identified but the magnitude of their effectiveness has proved somewhat disappointing".

Q And they are referring there to methods to do what?

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A My understanding is that sentence refers to methods to help people stop smoking.

Q And is that an example of a statement in this report that you rely upon for its truth?

A It is a sort of subjective statement. It is difficult to interpret. That is not one of the statements that I relied upon.

Q So you disagree with that assessment?

A No, I don't think that's an accurate statement. I don't disagree with it and I don't agree with it. I am not entirely sure what it means.

Q But in your selection of this document as one of the documents upon which you relied for the development of your opinions in this case, did you take into account the origin of the document, that is to say, the authors of the document?

A Yes, to some extent.

Q And those are -- those authors are?

A Brian Danaher from California University, Los Angeles.

Q Did you take into account that this report appears to have been prepared for a federal agency, namely, the Public Health Service?

A I did not explicitly take that into account.

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Q Did you take into account the institutional affiliation of the author?

A Yes, in part.

Q Did you attempt at any time in your preparation of your report or any other work in this case to independently search the literature for other articles on smoking cessation besides those which were provided to you by the defendants?

A Yes, I believe that we did.

Q And are any of the articles that are listed as those upon which you rely for your opinions in this case examples of articles that were found through that process?

A The material entitled Puget Sound, Free & Clear Program Brochure is such an example.

Q How did you come across that document?

A I don't recall. It was not provided to me by the defense in this instance, to the best of my recollection.

Q But in any event, am I right that there is nothing in particular, to your knowledge, that would render Exhibit 9 an unreliable source of information, in your opinion?

A That is correct.

(Ripps Exhibit 9 marked.)

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BY MR. PICCIONI:

Q And the first sentence of the third paragraph on page 1, would you read that, please.

A The one that begins "the economic costs"?

Q Yes.

A (Reading) The economic costs attributable to smoking have been cataloged and found to be of similar vast proportions.

Q That's "attributed," correct?

A I'm sorry. "The economic costs attributed to smoking." Did I say something different?

MS. MARCHANT: You said "attributable."

THE WITNESS: Sorry. Attributed.

BY MR. PICCIONI:

Q In light of the other parts of this page, what are they referring to as "similar vast proportions"?

A They appear to be referring to the percentage of various kinds of diseases that smoking is noted to be responsible for. And they go on to estimate the cost of smoking, the costs of smoking attributable to what they call lost production.

Q Could you read the first paragraph on

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page 2.

A "There has been a growing recognition in the business community of the overwhelming evidence for the dangerous health consequences of smoking and a clearer perception of the more immediate economic impact of smoking."

Q Continue if you could.

A (Reading) These developments have compelled an increasing number of companies -- at least 3 percent of all U.S. companies and 6 percent of companies in Canada -- to offer special programs and/or incentive plans to encourage smoking cessation among employees.

Q Is it fair to say that the substance of that paragraph is that one of the motivations behind the offering of smoking cessation programs is to save businesses money?

A That appears to be one of the motivations that is posited by the author.

Q Do you have an opinion about whether or not smoking cessation programs of any kind do in fact save businesses money?

A Yes.

Q And what is that opinion?

A My opinion is that under certain

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circumstances some programs do save, can save some businesses money.

Q Could you describe what those circumstances are?

A I can't describe them in their totality because there are always special circumstances that apply to any particular organization at a particular point in time. However, in general the circumstances would be that a smoking cessation program put in place is an effective one; secondly, that the employment patterns are such that employees work for that particular employer for a long period of time.

Q Let's suppose those conditions are met in a particular circumstance. The business concern is expending resources to get smokers to quit. Isn't that a loss of money?

A I'm sorry, I don't follow you.

Q Isn't that a business cost?

A Depending on how the program is established, yes. If the company is spending money to support such programs, that could be a business cost.

Q So how could smoking cessation programs save that business money?

A They can save the business money if there were substantial healthcare expenditures for

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absenteeism attributed to smoking, or if the company believed that were the case, and if the smoking cessation programs led to substantial reductions in smoking.

Q If the company believes it to be the case, but it is not really the case, and there are smoking attributable expenditures in excess of the cost of the smoking cessation programs, will in fact the business save money?

A You need to ask me that one again. I'm sorry.

(Record read.)

THE WITNESS: Given the circumstances that you've laid out there, no, the business wouldn't save money in that circumstance.

BY MR. PICCIONI:

Q So just going back to your answer to the preceding question before I asked that one, you said that if there are smoking attributable expenditures or the business believes there are smoking attributable expenditures, then, to paraphrase, the business could be saving money with a smoking cessation program. Isn't it really just the former of those two alternatives?

A I believe it is the former.

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Q What is a "smoking attributable expenditure" by definition in your usage of the phrase?

MS. MARCHANT: Are you referring to how he uses it in his report or how he is using it in the conversation you are having?

MR. PICCIONI: In his previous answers.

THE WITNESS: It would be an expenditure caused by smoking behavior.

BY MR. PICCIONI:

Q Is that the same as an expenditure that but for smoking would not have been incurred?

A I think in this circumstance it would be an expenditure that but for smoking would not have been incurred or that might have been incurred at a significant later period of time or that might have been paid for by somebody else.

Q If a benefit plan or the decision-makers for a benefit plan wanted to reach a prudent decision about whether or not to institute a smoking cessation program, would they consult an actuary?

MS. MARCHANT: Are you talking about a health benefit plan?

BY MR. PICCIONI:

Q Let's say, for example, sure, a

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Taft-Hartley health benefit plan.

A They certainly could consult an actuary.

Q What information would an actuary give them, kinds of information that would help them in that decision?

THE WITNESS: I lost the question. Would you --

MR. PICCIONI: Sure. Can you read it back.

(Record read.)

THE WITNESS: Again it would depend on the circumstances. An actuary might perform a study to estimate costs attributable to smoking. An actuary might give them information about the alternate smoking cessation programs that are available to the plan sponsor and the demonstrated effectiveness of those programs.

BY MR. PICCIONI:

Q Now in performing an analysis of smoking attributable expenditures, which I think was part of your answer just now, is the actuary establishing or investigating the association between smoking and expenditures?

A The actuary might investigate such an association, but a demonstration of that kind of association would not, in my opinion, be dispositive

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as to the existence of a causal linkage between smoking and those expenses, so that by itself would not be sufficient.

Q So who would be then qualified to tell the decision-makers in this fund that if a smoking cessation program reduces the number of smokers in the plan that costs will go down, if it is not the actuary?

A Well, I think the actuary has a role, so if you say it is not the actuary, I didn't mean to imply that the actuary had no role in such a determination. I think there is an actuarial component and a clinical component to that kind of determination. And as a clinical component it seems to me a physician or an epidemiologist trained in that area could be very helpful.

Q But you just rendered the opinion a few minutes ago, I am not trying to catch you up on something, but just so I can understand, that you thought there were circumstances under which a smoking cessation program could save a benefit program, or a business rather money.

A Yes, I think there are some circumstances.

Q And I think you agreed that a

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precondition for that to be true is that there is an actual causal relationship between smoking and healthcare expenditures. Am I correctly characterizing your previous answer?

A Yes, I think that's a correct characterization.

Q So can I draw the inference that you are therefore of the opinion that there is a causal relationship between smoking and expenditures?

A You are taking me to an area that is outside the area of my expertise, and I have no expert opinion on that particular question. Would you like my nonexpert opinion?

Q Only if your nonexpert opinion is what was in forming your previous answers.

A No, I think I have nothing to add.

Q So your previous answers weren't based on your nonexpert opinion. You were answering as an actuary responding within his field of expertise?

A Yes.

Q So if someone said in the course of a discussion about whether or not to adopt a smoking cessation program or, rather, asked you how do we know that any higher costs observed in smokers compared to nonsmokers will be diminished if we can get the people

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not to smoke, how would you answer?

A I think the answer is if it can be demonstrated in your particular circumstances that there are healthcare expenditures causally linked to smoking, that those are expenditures for which you, the plan sponsor, are likely to be financially responsible, then a reduction in smoking might have the effect of reducing healthcare expenditures.

Q How would one go about determining if that particular condition, if I am characterizing correctly, the existence of a causal linkage between smoking and expenditures existed for a particular trust fund?

A I missed the question. I'm sorry.

Q I may not have included the question. How would you go about determining whether there was a causal relationship between smoking and expenditures for a given trust fund?

A It would depend on the circumstances, in particular. In general, however, it seems to me it would involve investigations of the specific circumstances by people with actuarial, econometrics, clinical and/or epidemiological skill sets and to have the right set of skills brought to bear on what is a very complicated question.

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two from that report are listed among the documents that you indicate as providing a basis for your opinions in this case?

A That report is cited as one of the documents.

Q Correct. Excuse me.

A I don't think there is a particular chapter reference in the citation.

Q The reason why I limited it to a couple of chapters is because in response to a request for copies of the documents upon which you relied in this case, Ms. Marchant was kind enough to provide me with some materials which included, I believe it was two chapters from that book, not the entire book. Was that selection reflecting your reliance on certain portions rather than other portions of that report?

A I don't know. I may not have seen the entire report. Presumably what you received from Ms. Marchant was the material upon which we relied or at least some super set of the material on which we relied.

Q Now you say "we." "We" refers to --

A Me. It was the editorial we.

(Ripps Exhibit 10 marked.)

BY MR. PICCIONI:

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Q Mr. Ripps, I think the court reporter just handed you Exhibit 10 which is some few sections excerpted from the Surgeon General's report of 1989. I have the whole thing with me here if you want at any time to see what has been selected out, if that is an issue.

MS. MARCHANT: Is this a selection that you did or --

MR. PICCIONI: Yes, it is entirely of my engineering.

Q If I can turn your attention to page 151 -- let's go to page 150. We will reorder these. I did it again.

If you look at Table 6, Mr. Ripps, which is a tabulation of some numbers, can you tell me what these numbers represent, briefly.

MS. MARCHANT: Objection. Foundation.

BY MR. PICCIONI:

Q Would you like to see the whole report?

A I can tell you what the heading is. The heading is "Estimated relative risks for current and former cigarette smokers, females aged 35 or more, 4-year (1982-1986) followup of American Cancer Society 50-State study (CPS-II)." And therefore what I think these are are relative risks for various diseases for

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current smokers in one column, former smokers in the second column, as to nonsmokers, as compared to nonsmokers.

Q If we look at this table, three lines from the bottom there is a line that begins Cancer, Lung?

A Yes.

Q And the value for the relative risk in current smokers there, can you provide that for us?

A The value is 22.36.

Q And what, in sort of layperson's language, does that number mean?

MS. MARCHANT: Objection. Foundation.

THE WITNESS: I can only give you a layperson's reading of that because I believe this is sort of an epidemiological construct. However, my understanding of that number is that a current smoker's risk of lung cancer is roughly 22 times that of the risk of a nonsmoker for lung cancer.

BY MR. PICCIONI:

Q But as you say, this is the realm of epidemiology and somewhat outside of your expertise; is that correct?

A That's correct.

Q If you look at what's supposed to be two

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pages later, in your copy it might just be one, Table 12.

A Yes, Table 12.

Q You haven't seen this before, this table?

A I'm sorry. Please?

Q You have never seen this table before?

A I don't recall seeing this table before.

Q Can you read for me the title of the table?

A The title is "Estimated deaths (in thousands) attributable to cigarette smoking, 10 selected causes, males and females, United States, 1985."

Q Understanding the limitations that you would place on your answer, and please articulate them if you feel you need to, would you have reason to disagree with the following statement, that this table reflects an attempt to estimate the magnitude of the mortality in the United States caused by cigarette smoking?

MS. MARCHANT: Objection. Foundation. It also calls for speculation.

THE WITNESS: This is outside the area of my expertise, but having said that, given it is not an expert opinion, I have no reason to disagree with

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that's the intent of this table.

BY MR. PICCIONI:

Q I mean, after all, it says "attributable to cigarette smoking." Epidemiologists might have their own language, but -- so we don't know for sure, but perhaps that's what that means. Would you agree?

MS. MARCHANT: Objection.

THE WITNESS: Yes

BY MR. PICCIONI:

Q If you look at the -- if I look at the second paragraph in the Preface that begins at Roman iii of Exhibit 10, if you can just read that, beginning "On the basis."

A Right. "On the basis of more than 7,000 articles related to smoking and disease already available at that time in the biomedical literature, the Advisory Committee concluded that cigarette smoking is a cause of lung cancer and laryngeal cancer in men, a probable cause of lung cancer in women, and the most important cause of chronic bronchitis. The Committee stated that "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

Q They are referring there to which advisory committee?

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MS. MARCHANT: Objection. Foundation. Calls for speculation.

THE WITNESS: I am not certain, but I believe in the first paragraph it says the Surgeon General's Advisory Committee on Smoking and Health.

BY MR. PICCIONI:

Q Do you know if this report supports a contrary conclusion?

MS. MARCHANT: What report?

MR. PICCIONI: The 1989 report.

THE WITNESS: I do not know whether it supports a contrary conclusion. It appears that this paragraph refers to a report that was issued in 1964.

BY MR. PICCIONI:

Q If we go to Roman iv. At the bottom the paragraph beginning with the word "despite," if you can read that for us.

A "Despite this achievement, smoking will continue as the leading cause of preventable, premature death for many years to come, even if all smokers were to quit today. Smoking cessation is clearly beneficial in reducing the risk of dying from smoking-related diseases. However, for some diseases, such as lung cancer and emphysema, quitting may not reduce the risk to the level of a lifetime nonsmoker

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even after many years of abstinence. This residual health risk is one reason why approximately 390,000 Americans died in 1985 as the result of smoking, even after two decades of declining smoking rates."

Q In answering my next question I would just like you to take a look at the names and affiliations listed at pages Roman ix through xix. My question, and I may as well ask it while you are looking, were you to be consulted by a Taft-Hartley fund as an actuary as to where information might be sought establishing or contradicting a causal relationship between smoking and disease, would you, looking at this list, tell them these are the wrong people to ask?

A No.

Q Would you tell them these are the right people to ask?

A I would tell them that this report appears to be an authoritative source of the amount of those kind of linkages.

Q Those kind of linkages meaning causal linkages?

A Linkages between smoking and disease, causal linkages.

Q If a trust fund came to you as an actuary

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to provide them with advice about the effectiveness of smoking cessation programs, how would you go about providing them with that advice?

MS. MARCHANT: Objection. It is vague and ambiguous.

THE WITNESS: It depends again on the circumstances. And were they asking me about particular smoking cessation programs that were available to those funds, I would have to take a look at the evidence that had been compiled regarding the effectiveness of those programs.

BY MR. PICCIONI:

Q Placing ourselves back in time to the, say, late 1970s, would you expect that Exhibit 9 would be the kind of document that you might consult in answering a question whether a given type of smoking cessation program was effective or not?

MS. MARCHANT: Objection. Calls for speculation.

THE WITNESS: In part, this is one of the kinds of documents that I would consult. However, I would be much more attentive today regarding the effectiveness of particular programs being considered.

BY MR. PICCIONI:

Q Would you also want to see data regarding

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the effectiveness of the particular program being considered when the participants, where the participants in that program were socioeconomically similar to the participants in the fund?

A I would prefer to see data of that sort, yes.

Q For example, you would prefer to see data on the effectiveness of smoking cessation programs among blue-collar workers rather than professionals if we were talking about a blue-collar fund; is that correct?

A Yes and no. You characterized them as the effectiveness of smoking cessation programs. I would want to see data regarding the effectiveness of the smoking cessation programs under consideration with respect to people who had characteristics that were close to the characteristics of those covered by the fund as one could find.

Q Do you know of any studies of smoking cessation programs where the participants in the study were workers in construction trades or their spouses?

A No, I am not familiar with any such studies.

Q Members of the Teamsters Union or their dependents?

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A No.

Q Do you have an opinion about whether it would be easier or harder to get people working in construction trades to quit smoking as opposed to white-collar professionals?

A It is outside the area of my expertise. I have no expert opinion on that question, and I have no personal opinion on that question.

Q So you are just concerned that it might be different, not that you have an expectation that it would be higher or lower?

A That's correct.

THE WITNESS: Are we getting close to a break point?

MR. PICCIONI: Sure. That's fine.

(Recess.)

BY MR. PICCIONI:

Q Mr. Ripps, if I could bring you back to Exhibit 8, just to page 114.

A Yes.

Q In the first column there is a paragraph pretty much in the middle of the page that begins "many cessation programs." It is a short paragraph. If you could just read that.

A "Many cessation programs have been aimed

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at executives and white-collar workers. For example, a high proportion of insurance and pharmaceutical companies have had quit programs, while there have been few programs in manufacturing plants."

Q Do you have any reason to disagree with that statement as of the time it was written?

A I guess the first observation I would make, it is not clear here what he means by "few programs." I am aware of some programs in among manufacturing employees. Having said that, I have no reason to disagree with it.

Q What's an example of manufacturing employees?

A The one that comes to mind is Coors. I consider that manufacturing, others may not. Coors Brewery Company.

Q Is that a study that's described in Exhibit 8?

A I don't know whether it is in this exhibit or not.

Q Do you know if in that study the participants who took part in the smoking cessation programs were in fact workers in the manufacturing parts of the plant as opposed to white-collar workers?

A You referred to the term "study," and I

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was remiss in not responding to that term. This paragraph relates to programs and not studies, and I believe, but I'm not certain, that the program at Coors related not just to the executive or white-collar workers but rather to the entire work force.

Q Any other examples of programs in the manufacturing context?

A I believe, but I'm not certain, that the program at Ford included employees who were not generally characterized as white collar. I believe there were programs at U-Haul that extended beyond what one would normally characterize as white collar.

Q And there are documented results of the effectiveness of these programs?

A I'm not sure. There are --

MS. MARCHANT: I'm sorry. When you say "effectiveness," getting people to quit or cost effectiveness?

MR. PICCIONI: That's a good question. Let's just say getting people to quit.

THE WITNESS: I don't recall. I know there have been reports regarding the effectiveness of all three of those programs, and as we sit here today I can't recall the scope of those reports nor can I

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recall what they said, but I do know that programs existed and that they had been reported upon.

BY MR. PICCIONI:

Q In your report you make reference to the Ford Motor Company. Is that correct?

A I believe that's true.

Q At page 10.

A Yes.

Q So do you know if those quit rates ranging, as you say in your report, from 44 to 64 percent were obtained in the non white-collar population at Ford Motor Company?

A I do not know as we sit here today.

Q Do you know if that program was cost effective?

A I do not.

Q How would one determine if it was or not?

A I believe we sort of covered this before when we studied the cost of the program and the reductions in healthcare expenditures and absenteeism that were attributable to the program. You asked me if they were effective or not. Again I guess the question is do we mean effective in stopping smoking or effective in saving money.

Q That's what I was trying to focus on, the

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latter.

A That was my answer also, and that I believe is the case.

Q I realize you are not an epidemiologist, but are you familiar with the concept of latency in disease causation?

A Only as a layman.

Q Suppose we take it as a premise that there are some diseases where the cause and the manifestation as a clinical disease that would cause someone to go to the doctor are separated in time. And could we just continue the premise that among smoking-related diseases are such diseases where the separation in time can be decades.

A You can certainly pose such a premise.

Q Okay. If that were the case, do you foresee that there would be a problem establishing the cost effectiveness of a smoking cessation program in a reasonable time frame?

A Certainly a prolonged latency period for a significant amount of cost of the disease involved would be a complicated factor.

Q On page 2 of your report, item No. 3, could you read to me the last sentence beginning with the words "specifically"?

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A "Specifically, the funds could have reduced benefit levels for smokers and/or could have promoted and supported smoking cessation products and programs.

Q Can you point to me the parts of the report, if there are any, that elaborate upon the first of those two, namely, that the funds could have reduced benefit levels for smoking?

A I don't believe I elaborate upon that in the report.

Q Do you know of a Taft-Hartley health and welfare fund anywhere that has reduced benefit levels for smokers?

A No.

Q Would a policy of reducing benefit levels for smokers be justifiable if smokers did not in fact cost more than nonsmokers?

MS. MARCHANT: I object to the term "justifiable." Justifiable to whom and based on what?

THE WITNESS: That's exactly the question I was going to ask. Could you perhaps elaborate on what you mean by justifiable.

BY MR. PICCIONI:

Q Sure. Can the trustees of a Taft-Hartley

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fund arbitrarily select a subpopulation of its participants to receive reduced benefits --

A I don't really --

Q Believe it or not, I wasn't finished.

A I apologize. I didn't mean to interrupt you.

Q -- simply because it saves money?

MS. MARCHANT: Are you saying that that is what reduced benefits for smokers would be? Is that implicit in your question or --

BY MR. PICCIONI:

Q In your understanding of the constraints on the kinds of decisions that the trustees of Taft-Hartley funds make, and I am not asking for a legal opinion, it is whatever understanding you have of that, can they simply arbitrarily identify a subpopulation of beneficiaries and provide them with reduced benefits because it will save money?

MS. MARCHANT: I will object to the form and the use of the phrase "arbitrarily."

THE WITNESS: I need to qualify my answer in the way that you indicated, which is, I am not a lawyer, and I would never presume to advise the trustees on what they could or couldn't do. However, it would be, I think as a nonlawyer, as a layperson

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who knows something about these funds and about employee health benefit plans, generally I think that would be an unwise thing to do.

BY MR. PICCIONI:

Q So when you say that they could have reduced benefit levels for smokers, it wouldn't be wise for them to do so absent some evidence that smokers in fact cost more than nonsmokers?

A That certainly is one consideration that would be important. And the other consideration might be that the fund or trustees had concerns about the effects of smoking on the health of their participants for their beneficiaries, for example, on their mortality. And in the belief that smoking was not good for them, not good for their health, not good for their death, the rates at which they die, that they would impose such a differential in the interest of sort of a public health concern perspective.

Q And would either of those motivations, the saving of money and the public health concern, be served by reducing benefits if smoking were not the cause of disease?

A There is two questions there. Let's treat them separately. The health promotion aspect would not be served if smoking were not the cause of

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disease. The cost question, as you've pointed out earlier, is much more elusive because of time delays and because of other complicating factors. Certainly with respect to the promotion of good health or the promotion of health and welfare, without a capital H and a capital W, that kind of a step would be justified only if there were a belief with some demonstrated factual basis that there were a causal link between smoking and disease.

Q You mentioned other complications. What are some of those other complications?

A The linkage between smoking and healthcare costs and the timing of those costs, who has to pay for those costs. Particularly in a Taft-Hartley environment where there may be a fair amount of worker mobility, it would be a complicated determination.

Q Mr. Ripps, in your report, as I recall, you are critical of Mr. Roberts' treatment of stop-loss premiums.

A I believe his treatment of stop-loss insurance more generally than just premiums. Shall I give you a reference on that?

Q Yeah.

A It is the bottom of page 4.

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Q Now, is it your understanding that the composite smoking-attributable fraction which Mr. Roberts calculates is applied to annual expenditures including amounts paid for stop-loss insurance?

A No, that is not my understanding.

Q Are you saying that they should have been included?

A I am saying that the expenditures should have included stop-loss premiums and should have been reduced by stop-loss recoveries.

Q Now which of those two quantities is greater stop-loss premiums or stop-loss recoveries?

A That question can't be answered in generality, only in abstract. It has to be asked and answered as to particular funds and as to particular periods of time.

Q Suppose I asked the question in relation to many funds over a long period of time, in aggregate; is there an answer?

A I don't think there is an answer. If you were to ask the question with respect to a stop-loss insurer and its book of business over a long period of time, I think there is an answer, but when you ask it from the perspective you did, I don't think there is

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an answer.

Q Fine. Then let's ask the question in relation to a particular stop-loss insurer or a hypothetical one.

A For a particular stop-loss insurer that remains in the business over a period of time, the stop-loss premiums would need to be greater than the stop-loss recoveries.

Q I seem to recall, but I can't find the place in your report where you were also concerned about application of Mr. Roberts' methodology to funds that purchased insurance.

A Yes, that would be, I believe -- there is one reference to that on page 5, and there is another reference to that on page 6.

Q Five concerns mainly HMOs; is that right?

A Yes, it does.

Q On page 6 is it fair to characterize your concern as follows: That Mr. Roberts is applying the smoking attributable fraction to premiums paid by the funds to insurance companies, the concern stemming from the fact that those premiums include amounts paid to cover administrative costs and profit of the insurer, the reinsurer?

A Concerns are with respect to

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administration, marketing and profit and the amounts paid inappropriately because of fraud and abuse.

Q As a practical matter is it possible for a Taft-Hartley health and welfare plan to find a reinsurer that will not include in the premiums costs attributable to marketing, profit and administration?

A I'm a bit confused about your question because you refer to reinsurer, and I think this point, that is, the second point on page 6 of my report is related to Mr. Roberts' treatment of fully-insured premiums, stop-loss premiums and not --

Q My mistake. Thanks for correcting me. I am talking about fully-insured funds, insurance companies.

A So your question is, is it possible to find an insurer who would not include such items in their premiums?

Q Right?

A I don't think so.

Q Is it possible for a Taft-Hartley health and welfare plan that is self-insured to find healthcare providers who don't pass on to the fund the costs of administration and profit?

A That's an interesting point. With respect to a self-insured fund, the claims paid by

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those funds, that is, the medical expenditures, include an amount for the administration and the profit and the margin for the providers of those services. In the case of a fully-insured plan, the premiums include not only allowances for those amounts that are incurred by providers of healthcare services, but also amounts incurred by the insurers; there is sort of a double counting of amounts for administration, marketing and profit. One could argue that medical expenditures by a fund must necessarily include those amounts that are built into the rates charged by providers of healthcare services, and I have not challenged that. It is rather the administrative, marketing, profit allowances for the insurers, for the insured situation which I think have been treated inappropriately by Mr. Roberts.

Q But a Taft-Hartley fund that elects to purchase insurance is getting something for its money; isn't that true?

A Yes.

Q And what is that?

A It depends on what it is buying insurance for. It is getting insurance protection and administrative services and lots of other things arguably.

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Q Sure. But if we do a head-to-head comparison between a fund that elects an administrative services only arrangement with an insurer and a fund that elects to actually purchase insurance as well as administrative services from such an insurer, to the extent to which the second one is paying more, are they getting something for that incremental cost in return?

A Yes, they are, but what they are getting is not healthcare services, and that's the distinction.

Q Am I right that what they are getting is essentially protection from the risk of extraordinary claims in any one particular year?

A That is part of what they are getting. That can also be gotten through a stop-loss program, but yes, that's one of the things they are getting.

Q What else is there?

A Depending on the circumstances in the comparison that's made, they may be getting some insulation from claim determination decisions, because it is an insurer's decision and not the fund's decision as to whether a particular expense is covered. There may be others that I am not thinking of at the moment. The easiest way to see the

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difference, however, is to compare Mr. Roberts' treatment of a self-insured fund where he applies his SAFs to his estimates of medical claims to what he does for fully-insured funds where he applies those SAFs to premiums. Claims and premiums are simply not the same things.

Q Although, if the premiums are experience rated, there is a relationship between the two; is that correct?

A There is a relationship between the two, but even an experience-rated situation the premiums include amounts that are in addition to claims. They relate generally to charges for administration, marketing and profit.

Q At the top of page 6 you quote from Mr. Roberts' report when he describes his consideration of trusts that may have contracted with insurance companies that use community-rating techniques. Is that correct?

A Yes.

Q And your statement in this report is that you are not aware of any insurance company that has operated a community-rating plan, and if I can just paraphrase here, that would offer a preferred rate to a fund that was smoker free?

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A That's correct.

Q That's a fair characterization?

A Yes.

Q Have you ever heard of a fund which is smoker free?

A I don't think that I have. Of course, I didn't introduce the concept, Mr. Roberts did.

Q Absolutely. But is that one possible explanation for why you are not aware of any insurance company that has operated a plan in that way?

A That's one possibility.

Q Is the health insurance market what economists would call efficient?

A I don't understand the question.

MS. MARCHANT: Objection. Foundation.

BY MR. PICCIONI:

Q Is it a competitive market?

A The health insurance market is a competitive market.

Q What are insurance companies competing for?

A That question is so broad that it's impossible to answer. It depends on the market and the type of product we are talking about.

Q Are they competing for, let's say, in

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this part of the market that we are talking about, the insurers of health and welfare plans, are they competing actively for the opportunity to insure those plans?

A They are competing actively for the opportunity to provide services to those plans, including in some instances insurance.

Q And if an insurance company comes up with an idea of how they could provide insurance at a lower cost and still preserve their profits, in general, would you say that they would do so?

A That question has a couple of problems with it. One is the notion of providing insurance. As I said earlier, a lot of the competition relates to the provision of services to these funds, only one of which is insurance. There are lots of other services that insurance companies and their competitors seek to provide. The other version that you made was to preserving their profits. There are a number of companies that operate in this arena which are not for profit. So it gets a little dicey to speak about all competitors in the context of preserving or increasing their profits. Having said that, if a competitor in this market, quote, builds a better mousetrap, close quote, then it is likely they would bring that to the

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marketplace if they felt it gave them a competitive advantage.

Q Do you think it is an unreasonable speculation that if there were trust funds that had succeeded in reducing smoking attributable expenditures, that there might well be competition among insurance companies providing insurance to such funds based upon offering lower premiums to those funds?

MS. MARCHANT: Objection. Calls for speculation.

THE WITNESS: I think that would be a very dangerous speculation because there are so many other variables involved of which smoking behavior is only one.

BY MR. PICCIONI:

Q You may need to help me here, Mr. Ripps. I am looking for the part of your report where you talk about -- strike that.

When Mr. Roberts estimates the smoking attributable expenditures of the absent class members, he uses a medical claims ratio to estimate what fraction of the total expenditures of the funds are of a class of expenditures to which the SAF should be applied; is that correct?

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A That is my understanding, except that a medical claims ratio is in fact not applied to the total expenditures of the funds but rather to his estimates of those total expenditures.

Q Fair enough. And is it your understanding that that ratio is calculated based upon the analysis of the five of the six named plaintiff funds in this case?

A That is my understanding.

(Ripps Exhibit 11 marked.)

BY MR. PICCIONI:

Q The court reporter is handing you Exhibit 11. If you can just tell us what that is.

A This is Mr. Roberts' report entitled, "Smoking Attributable Expenditure Calculations and Opinions in Iron Workers Local No. 17 Insurance Fund, et. al., v. Philip Morris, Incorporated, et. al.," dated October 8, 1998.

Q Now I provided you with a portion of that report that does not include the part I wanted to ask you about, so we are going to have to supplement somehow with Appendix J from that report. Does that -- I can give you the whole thing if you want to see what that's a part of.

A I have seen this.

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Q Could you describe to us what is going on in Appendix J from a calculational perspective.

A My understanding of what Mr. Roberts has done in Appendix J is to calculate for each of five funds the ratio of medical claims to total claims paid, as indicated by Form 5500s, for relatively limited periods of time.

Q But these are the periods of time for which he had computerized claims data. Is that your understanding?

A I am not sure about that.

Q Now in developing the or calculating the mean of the claims ratios, is it clear from either that appendix or from descriptions in the text portion of Mr. Roberts' report how that mean was calculated? Feel free to check the calculation yourself.

A It appears that the mean claim ratio was computed as the unweighted average of the claims ratios that he calculated for the five named funds indicated in Appendix J.

Q And that unweighted average is what value?

A 85.9 percent.

Q Could I ask you to -- if I asked you to calculate the weighted average of the medical claims

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ratio for those five funds, could you do it based on the information in Appendix J?

A Yes, I could.

Q Could you take a shot at it?

A I think it would take me too long, but it would be a higher number than 85.9 percent, I can assure you.

Q And why is that?

A Because the fund with the largest amount of claims is the Ohio Laborers, and the medical claims ratio for that fund is 93.1 percent.

Q What's the ratio of the amount of claims in the Ohio Laborers versus the Service Employees?

A It is dramatically higher. That one I can calculate for you quickly. The Ohio Laborers claims are 151 times the claims as indicated on the Form 5500 for Service Employees Union.

Q And that's -- I don't want you to answer the same question twice, but that's arithmetically the reason why a weighted average of those values would be substantially larger than the unweighted average?

A Yes.

Q What is the impact on the estimation -- qualitatively what is the impact on the estimation of damages for the absent class members of deciding to

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use the unweighted average as opposed to the weighted average?

A The use of an unweighted average produces a lower estimate than the weighted average. Neither one in my opinion produces a very good estimate.

Q Mr. Ripps, can you describe to me the role that the plaintiffs' estimate of smoking prevalence plays in the calculation of their damages?

A My review was focused on Mr. Roberts' report and his methodology, and I do not believe that smoking prevalence played any role in Mr. Roberts' report in his methodology. It is my understanding that smoking prevalence played a role in Mr. Dement's report and in his determination of smoking attributable fractions.

Q Do you know if smoking attributable fraction goes up with an increasing estimate of prevalence or does it go down?

A You are taking me into territory that is not within my area of expertise in this instance. Having made that qualification, my understanding is that the higher level of smoking prevalence, the higher smoking attributable fraction.

MS. MARCHANT: You are assuming that all other things remain equal?

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MR. PICCIONI: I always do, yes.

THE WITNESS: Assuming other things remain equal.

BY MR. PICCIONI:

Q And do you know what period of time was chosen in estimating smoking prevalence?

A I don't recall.

Q You are critical, are you not, of Mr. Roberts' use of mortality ratios to estimate expenditure ratios; am I correct?

A Could you ask me that question again?

Q Sure. I'll rephrase it. Are you aware that the smoking attributable fraction that Mr. Roberts applies to expenditures on a disease specific basis are fractions which are based upon relative risk of mortality?

A Yes, that's my understanding.

Q And again, I just can't find it, but I thought I remembered seeing in either your report or perhaps it was a recent affidavit some explicit criticism of that methodology.

A It is in my report, and it is on page 7.

MR. PICCIONI: I would like to make Appendix J to Mr. Roberts' report part of Exhibit 11. We will make it kind of a hybrid of it, if that's all right.

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MS. MARCHANT: It's fine by me.

BY MR. PICCIONI:

Q So we are referring to the last section on page 7; is that correct?

A Yes.

Q Can you give me some examples of instances where this statement is not accurate?

MS. MARCHANT: What statement is that?

BY MR. PICCIONI:

Q I'm sorry. I'll just read it. This is a quote from Mr. Roberts' report that appears in your Iron Workers report. Quote: ...the percentage of people that die because of smoking of the total people that die, bracket, from a specific disease, close bracket, would be a good approximation as to the total amount of morbidity associated with smoking, bracket, with respect to that disease, close bracket, end quote.

A Your question is can I give you an example?

Q Yes.

A I'm not sure that I can. Let me first say a little bit about how I interpret this comment of Mr. Roberts' which I believe appeared in the transcript of his deposition in the Northwest Laborers

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case. I read that sentence by substituting for the word "morbidity" "healthcare costs." I think that's what he meant. And I don't believe that if the statement is read that way it is correct in all instances.

Q And I was just asking if you could give me an example of where it might not be true -- where it is not true.

A I will give you a general idea of why that may not be true. If there are instances of diseases from which people die more quickly because they have smoked than those who have not smoked, the expenses for the nonsmokers could well be greater on average than those for the smokers. As a result, the percentage of people that die because of smoking would not be a good approximation, so the total amount of healthcare costs associated with smoking for that particular disease.

Q Can you give me an example of a disease that has that characteristic?

A I have not studied that question, and I can't.

Q Might there be diseases for which the reverse is true?

A Yes, there might be diseases for which

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the reverse is true, I think.

Q Can you think of an example of one of those?

A Offhand I can't.

MS. MARCHANT: Would this be a good time for a break?

MR. PICCIONI: It's a great time for a break.

(Recess.)

BY MR. PICCIONI:

Q Mr. Ripps, on page 8 of your report you say that you are not aware of any actuarial literature supporting the broad scope of certain statements made by Mr. Roberts at his Northwest Laborers deposition. By the way, before I ask the question, am I correct that you have not reviewed Mr. Roberts' deposition in the Iron Workers case yet? Is that true?

A That is not true. I believe I have reviewed his deposition. I reviewed it subsequent to this report, as I recall.

Q Okay. Thanks.

Going back to my question, one of those statements that you are referring to here is, quote, The data shows, for example, in a hospital, smokers will...have a longer length of stay than nonsmokers. I wanted to draw your attention to Exhibit 12.

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(Ripps Exhibit 12 marked.)

BY MR. PICCIONI:

Q Can you just tell us what the title of that is?

A "Health Risks and Their Impact on Medical Costs."

Q Have you ever seen this report before?

A Yes, I have.

Q I'm not holding you to a rigorous analysis of the contents of this report. I just want to see if you would agree that in Appendix A, page 24, there is a table which appears, which is headed "Hospital Inpatient Days Per 1,000." Is that correct?

A Correct.

Q And there are values in two columns presumably for people with elevated and low exposure to the risk factors that are indicated to the left. Is that a fair characterization?

A Yes.

Q On its face does this table lend some support to the proposition that smokers will on average have a longer length of stay than nonsmokers?

A No, I don't think so.

Q Could you explain?

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A Your table on page 24 of Exhibit 12 refers to hospital inpatient days per thousand. That is a product of the number of admissions per thousand and the length of stay. And so it is very difficult to infer anything about length of stay from this table which is the product of two factors.

Q And that answer is premised on the assumption, and you may very well be right, that it's per thousand participants essentially in the plan?

A Yes, it is a fairly standard measure.

MS. MARCHANT: You say "participants in a plan." I just want to -- are they studying a health plan or are they studying patients? It may not be important to the question.

MR. PICCIONI: I think it is an excellent question.

MS. MARCHANT: I don't want to assume it is participants in a hospital if it is not.

MR. PICCIONI: We assume nothing.

Q Do you agree that this appears anyplace to be a study of Chrysler employees?

A Yes.

Q So you think that's per thousand employees basically?

A I do think so.

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Q Fair enough.

This is another one of these awkward moments where I ask you to find for me in your report something that I once located, a reference to COB recoveries.

A It is on the bottom of page 4.

Q Thank you. Now is it your understanding that if, that there could be claims paid by the fund that are later reimbursed through coordination of benefits?

A Yes.

MR. PICCIONI: Off the record.

(Discussion off the record.)

BY MR. PICCIONI:

Q Mr. Ripps, suppose there were a fund in a community where all of the healthcare providers conspired to charge fraudulently high rates, not charge high rates, but to charge fraudulently high amounts to participants and their beneficiaries when they came to those providers for healthcare. Is it your opinion that the financial position of the Taft-Hartley affected behavior would not be changed as a result?

A The question relates to what aspect of the Taft-Hartley fund, it's financial position?

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Q Yes.

MS. MARCHANT: I object. It is an incomplete hypothetical.

THE WITNESS: Meaning in this instance what? I'm not sure I am following you.

BY MR. PICCIONI:

Q If some conduct on the part of, let's say, for example, a healthcare provider causes a trust fund to pay more for healthcare services than it would have in the absence of that conduct --

A Are you talking about fraudulent conduct?

Q Fraudulent conduct. I don't want to put you in the position of making a legal determination, but conduct that is somehow avoidable, that is to say, is something that we can evaluate in terms of its impact. Are you saying that a trust fund is not affected in its financial position by conduct of that type?

MS. MARCHANT: Object to the form.

THE WITNESS: Again I need to ask you for clarification on what you mean in this instance by financial position.

BY MR. PICCIONI:

Q You've described in your report in

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general terms, am I correct, the process by which the amount of money coming into the fund relates to the amount of money that is being spent by the fund? Is that correct?

A That's correct in general terms. And my description is based on the descriptions that were given by trustees of those funds in their depositions.

Q So suppose hypothetically we had some actor whose actions caused the trust funds to be paying over a long period of time more for healthcare than they would in the absence of those actions, is it then your opinion that those actions do not change the financial condition of the fund?

MS. MARCHANT: Object to the form.

THE WITNESS: If by financial condition you mean the fund's surplus or deficit over time, that is correct.

BY MR. PICCIONI:

Q So that if we had as my hypothetical actor, let's say, a conspiracy of hospitals who charged beneficiaries of the trust funds ten times as much for healthcare as they did anyone else, the trust fund would not be affected in its financial condition by such conduct?

A Again, the difficult term here is

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"financial condition" or "financial position." And if by those terms we mean surplus or deficit over a long period of time, that is correct.

Q Have you looked at the benefit packages that any of these health and welfare funds involved in this litigation offer to the participants?

A Yes.

Q In the light of your general experience with health insurance, would you characterize those benefit packages as being rather generous, moderately generous, or not particularly generous?

MS. MARCHANT: Objection to the form.

THE WITNESS: The difficulty with that question is there are lots of funds over long periods of time, and we really have to look at the benefit package of a particular fund at a particular point in time. Beyond that, it would be necessary to look at the general areas of benefits as to whether they were more generous, less generous. I do recall that with respect to at least one of the funds, and I think more than one of the funds, the prescription drug benefits were somewhat more generous than what I consider to be the norm.

BY MR. PICCIONI:

Q But you are continuing to evaluate this

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question in the light of further information that's being provided to you about these funds?

A No, I am not looking at that question specifically, that is, the relative richness or lack of richness of the benefit programs.

Q And you have not yet had an opportunity to review the minutes of trustee meetings or proceedings of appeals before the boards of trustees for claims denied?

A I have had an opportunity to review minutes of lots of trustees meetings. In many instances the results of appeals are redacted.

Q Not just the names?

A No, entire sections have been blanked out for reasons unknown to me.

MR. PICCIONI: I am finished with my questions. I just want to make it clear that the plaintiffs have to reserve the right to resume this deposition if there is supplementation, substantive supplementation of his report.

MS. MARCHANT: If there is substantive supplementation, we will discuss that at that time.

MR. PICCIONI: Okay. I think that's it.

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I, JAY C. RIPPS, do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____, 19____ at _____, _____.
(City) (State)

_____
JAY C. RIPPS
Volume 1

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STATE OF CALIFORNIA)
: ss
COUNTY OF SAN MATEO)

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: December 14, 1998

ELAINE A. DELLINGES
CSR No. 5049

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